

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.43 of 2019
and
Crl.MP.No.366 of 2019

S.Rathinavel

Petitioner

Vs

1.R.Prateepa (wife)
2.R.Sundaramurthy (Minor son)

Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the judgment dated 04.12.2018 passed in M.C.No.399 of 2012 on the file of the learned VII Additional Family Court at Chennai.

For Petitioner : Mr.S.Sadasharam
For Respondents : Mr.K.Ramanamoorthy.

O R D E R

The revision petitioner is the husband and the first respondent is the wife and the second respondent is the minor son. The first respondent filed a petition under Section 125 of Cr.P.C., for maintenance before the VII Additional Family Court, Chennai, in M.C.No.399 of 2012. After an elaborate enquiry, the learned VII Additional Family Court Judge, Chennai passed an order dated 04.12.2018 awarding a sum of Rs.3,000/- per month to the first respondent and Rs.3,000/- per month to the second respondent towards maintenance. As against the said order, the petitioner/husband filed the present Criminal Revision Case before this Court.

2 The learned counsel for the petitioner would submit that the husband filed a petition for Divorce against the first respondent/wife on the ground of adultery and cruelty in F.C.O.P.No.395 of 2012 before the VII Additional Family Court, Chennai. After receipt of summon, the first respondent/wife filed a petition for maintenance in M.C.No.399 of 2012 before the VII Additional Family Court, Chennai. After enquiry, the learned VII Additional Family Court, Chennai, allowed the petition and directed the petitioner/husband to pay a sum of Rs.3,000/- per month to the first respondent and Rs.3,000/- per

month to the second respondent towards maintenance. When the husband filed the Divorce petition on the ground of adultery and cruelty, without giving answer to that petition, the learned VII Additional Family Court Judge, Chennai, passed an order is not accordance with law. In case, the Court granted divorce on the ground of adultery and cruelty, she is not entitled to get maintenance from her husband. The first respondent led an adultery life. Further, he stated that the first respondent is working in the private concern and earning a sum of Rs.6,000/- per month. Therefore, she is able to maintain herself and she is not entitled to get maintenance. Therefore, the order of the VII Additional Family Court, Chennai, is liable to be set aside.

3 The learned counsel for the respondents would submit that after marriage the revision petitioner neglected to maintain the respondents and he has filed a petition for divorce and also stated that he has sufficient means to maintain his wife and child. Despite having sufficient means, he refused to maintain the respondents. There is no proof to show that the first respondent/wife is working in a private company and earning sufficient income to maintain herself. Hence, the learned counsel for the respondents prays to dismiss the revision case.

4 Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

5 Admittedly, the revision petitioner filed a petition for divorce in F.C.O.P.No.395 of 2012 in the year of 2012. Subsequently, during the pendency of the petition for divorce filed by the husband the first respondent/wife filed the maintenance case in M.C.No.399 of 2012 in the month of August 2012. When the Matrimonial case is pending before the Family Court, Chennai, the first respondent/wife can file the petition for interim maintenance under Section 24 of the Hindu Marriage Act but not invoking Section 125 of Cr.P.C. In this case, the wife has not filed any maintenance case before filing the petition for divorce by the husband. Admittedly, the first respondent/wife has filed a case for maintenance only after receiving the summons from the Court in F.C.O.P.No.395 of 2012. Further, the Family Court, has not passed any order in F.C.O.P. No.395 of 2012, the same is pending for orders.

6 It is settled law that if the husband is having sufficient source and means, neglected to maintain his wife and the wife is unable to maintain herself, she is entitled to get the maintenance. In this case, the husband has filed a petition for Divorce on the grounds of adultery and cruelty. The trial Court without deciding the F.C.O.P., as to whether the wife is leading adultery life, and husband is entitled to get decree for divorce on the ground of adultery and cruelty decided

only the maintenance case alone. The learned VII Additional Family Court Judge, Chennai ought to have converted the petition filed by the wife under Section 125 Cr.P.C., into Section 24 of Hindu Marriage Act or the Family Court should have decided both the cases simultaneously. Instead of that before deciding the issue in F.C.O.P.No.395 of 2012 the trial Court decided the M.C.No.399 of 2012 which warrants interference of this Court. However, after disposing the F.C.O.P.No.395 of 2012, if the wife succeeds then she is entitle to file a petition under Section 125 of Cr.P.C., and if the husband succeeds and established the ground of cruelty and adultery, the wife is not entitle to file any petition for maintenance. However, the order passed by the VII Additional Family Court, Chennai to the second respondent is hereby confirmed. Since, the paternity of the second respondent is not in dispute and the second respondent is entitled to get maintenance from his father/petitioner. If the person is having sufficient means and refused to maintain the child, the child unable to maintain itself is entitled to get a maintenance from his/her father.

7 Therefore, the petitioner has not established that the second respondent/child is having sufficient means to maintain himself and he is aged about only 10 years. Hence, the revision petitioner is liable to pay maintenance to the second respondent.

8 Accordingly, this Criminal Revision Case is partly allowed by set aside the award passed by the VII Additional Family Court, Chennai with regard to first respondent and modified and enhanced from Rs.3,000/-p.m. to Rs.6,000/-p.m. towards monthly maintenance of the second respondent. Consequently, connected Criminal Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

sbn

To

1. The VII Additional Family Court,
Chennai.

+1 CC to Mr.K.Ramanamoorthy, Advocate sr 31743.

+1 CC to Mr.S.Sadasharam, Advocate sr 31833.

Crl.RC.No.43 of 2019
and

Crl.MP.No.366 of 2019

KAN (CO)

SP (09/04/2019)